

Supreme Court of the United States

OCTOBER TERM, 1970

No. 758

UNITED STATES OF AMERICA,

Petitioner,

—v.—

RAYMOND J. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Docket entries	1
Proceedings of March 5, 1968	4
Grand jury subpoena duces tecum (March 5, 1968)	11
Memorandum of points and authorities in support of motion to quash subpoena duces tecum (March 29, 1968)	13
Affidavit of William Shirley Deverell in support of motion to quash (April 8, 1968)	36
Proceedings of April 9, 1968	40
Proceedings of May 14, 1968	42
Proceedings of July 10, 1968	45
Proceedings of July 12, 1968	53
Proceedings of July 25, 1968	59

	Page
Order denying motion to quash (July 25, 1968) _____	63
Notice of Appeal (August 5, 1968) _____	65
Proceedings of December 2, 1969 _____	66
Opinion of court of appeals (May 19, 1970) _____	71
Judgment of court of appeals (May 19, 1970) _____	74
Order denying petition for rehearing (July 29, 1970) _____	75
Order granting certiorari (January 18, 1971) _____	75

DOCKET ENTRIES

- 3/ 5/68 Ent Procds, Counsel and Witness Ryan and Ct Court Orders Stipulation granted that proceedings are taking place outside of the Grand Jury and outside of a public hearing.
- Attorney Joyce for the Dept of Justice Moves to have the Court Order Witness Ryan to produce documents for inspection by the grand Jury on 4/15/68, all counsel argue to the Court, Court Orders Motion Denied, Ryan Exhibits 1 and 2 Admitted. By Order of Judge Manuel L. Real.
- 3/29/68 Fld Applic of deft Ryan for Order shortening time for service of Notices of Motion.
- Fld Ord (CC) shortening time for service of Notice of Motion.
- Fld Mot & Not of Mot retnble 4/8/68 at 2 PM bef (R) to quash subpoena duces tecum, as to deft Ryan.
- Fld Mot & Not of Mot retnble 4/8/68 at 2 PM bef (R) to quash subpoena duces tecum pertaining to Ryan Investment Limited, et al
- Fld affid of John Bateman Story in suppt of Mot to quash subpoena duces tecum.
- Fld Memo of pts & auths in suppt of Mot to quash subpoena duces tecum.
- 4/ 3/68 Fld Affidavit of William Shirley Deverell in Support of Mot to Quash Subpoena Duces Tecum.
- Fld Affidavit of John William Mills in Support of Mot to Quash Subpoena Duces Tecum.
- 4/ 8/68 Fld Govt's Memo in oppos to Ryan's Mot to quash subpoena.
- 4/ 9/68 Attys Miller, Simon and Sheridan for Petitioner Ryan make stmts to the Court, Attys Byrne, and Joyce make stmts to the Court, Court orders hearing on Petitioner Ryan's Mot to quash subpoena Duces Tecum cont to 5/14/68, at 11 AM and service on subpoena Duces Tecum modif to be returned on 5/14/68, at 10:00 AM. (R).

DOCKET ENTRIES

- 4/ 8/68 Court ords case cont to 4/9/68, at 1:30 PM for hrg (R).
- 5/14/68 Attys Miller, Byrne, Joyce & Sheridan md stnts to the Ct, Ct ords on motn of the petr Ryan, hrg on motn cont to 7/2/68), 11 am, Witn Ryan to appear befor the G/J on 7/10/68, 9:30 am. and any motns re Witness Hirschman be heard either on 5/20/68, 2 pm or 5/21/68, 11 am (R).
- 7/ 2/68 On mot of the govt, Ct ords hrg on mot of witness re: Ryan is cont to 7/10/68, 1:30 PM. Mld cys to all cnsl, thru office of US Atty, Los Angeles, Calif. (R)
- 7/ 8/68 Fld Notice of Intention as to witness John Ryan to raise an issue concerning the laws of the Republic of Kenya bef the Court on 7/10/68.
- 7/10/68 Fld affid of James Slater Burris. Counsel argue to the Court. Govt exbts 1, 2, 3 admitted. Court ords Mot of Witness Ryan to quash subpoena duces tecum is cont to 7/12/68 at 10 AM & ords Witness Miss Hanson to report to the Grand Jury on 7/12/68 at 9:30 AM. On Mot of Govt, Court ords stnts of Atty Philip Michael, AUSA, that portion of reporters Notes are to be sealed.
- 7/12/68 Coun argue the Mot to the Court, Govts exbts 3, 4, 4A admitted. Govt's exbt 3 under Seal by Ord of Court and Locked in Clerk's Office. Court ords Mot of witness Ryan is denied w/o prej & directs Atty Joyce to prepare findings & ord (R). Fld subst of attys for Witness Ryan, design of cnsl purs to Local Rule 2d & stip to continue appearance of Witness Ryan, Gorman & Hansen bef the Grand Jury on 7/24/68. (R).
- 7/24/68 LODGED proposed Court's Order (R).
- 7/24/68 Counsel mk sumis to the Court. Court ords matter cont to 7/25/68 at 10 AM for fur procs. (R).

DOCKET ENTRIES

- 7/25/68 Fld Court's Order (R).
- 7/25/68 Fur procs; hrg mot to quash subpoena: Witns Gorman & Ryan pres in Court. On Mot of witns' cnsl, ord Court room cleared. Cnsl argue mot to quash. Court's exbt No. 1 marked & admitted & placed under seal per Court ord. Ord prvious ord re production of diary by Witn Gorman dtd 7/12/68 is vacated, mot to quash is granted re production of diary by Witn Gorman, Court finds documents for production are property of Witn Ryan, mot to quash denied as to Witn Ryan, ord witns. Gorman & Ryan to appear bef Grand Jury 9/11/68, 9:30 AM. ord Witn Ryan to produce books, records, etc, of Ryan Invest. Ltd. of Nairobi & of Mawingo, Ltd of Nanyuki & nairobi. Govt to prepare ord. Fld affid of Wm. J. Gorman in supt of mot to quash. (R)
- 8/ 5/68 Fld Notice of Appeal by Witness Raymond J. Ryan Notice of Appeal. Copy to Judge. Mld copies (3) to U.S. Atty 32 No. Spring St., L.A. Fld Cost bond on appeal in the sum of \$250.00.
- 8/ 9/68 Fld witn's Raymond J. Ryan Designation of Record.
- 8/23/68 Fld ex parte applic and ord thereon for disclosure of record (JWC)
-

[Transcript, Vol. 2]

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HONORABLE MANUEL L. REAL, JUDGE PRESIDING

Misc. Grand Jury

In the Matter of

RAYMOND RYAN,

A Witness Before the Grand Jury

* * * *

[2] APPEARANCES:

For the Department of Justice:

EDWARD JOYCE, Esq. and

PHILIP MICHAEL, Esq.

Department of Justice

Washington, D. C.

For the Witness Raymond Ryan:

SIMON, SHERIDAN, MURPHY,

THORNTON & MEDVENE

625 South Kingsley Drive

Los Angeles, California; by

ROBERT E. HINERFELD, Esq.; and

HERBERT J. MILLER, JR., Esq.,

JOHN CASSIDY, Esq., and

CHARLES N. SHAFFER

Washington, D. C.

[3] LOS ANGELES, CALIFORNIA
TUESDAY, MARCH 5, 1968, 11:30 A.M.

* * * *

[8] THE COURT: Mr. Miller?

MR. MILLER: May it please the court, my name is Herbert J. Miller, Jr. I represent the witness Mr. Ryan.

Briefly the history of this case I think probably goes back some two and a half years.

Mr. Ryan testified on behalf of the [9] Government in a case involving a gentleman by the name of Marshall, also known as Caifano, Marshall Caifano, Smedhoff and Delmonico. Subsequent thereto he testified as a Government witness. He came from Africa without a Government subpoena and did testify on behalf of the Government in that case.

Some time thereafter in mid-1965 special agents of the Internal Revenue Service attended his office of the office of the Ryan Oil Company in Evansville, Indiana. They were given complete access and complete cooperation with respect to the records of that company.

In addition to those special agents at approximately the same time several businesses that Mr. Ryan either owns or has an interest in in the California area were made the subject of a massive tax investigation.

He was subpoenaed to appear and did appear and testify before a grand jury in the Southern District of New York in November of 1965.

In November of 1966 he was served with an IRS summons requesting, inter alia, that he produce the records of Mawingo, Ltd., the same records basically which are in issue here.

At that time he filed statements with the Internal Revenue Service and was in fact interviewed by the Internal Revenue Service. These statements are a [10] matter of record with the Internal Revenue Service.

He stated that he did not have possession or control of the records and that he was unable to produce them but that he would make and did in fact make a trip to Africa in an effort to obtain these records, which was unsuccessful.

Subsequent to this no action was taken to enforce the Internal Revenue summons.

In July of 1967, last year, in effect a forthwith grand jury subpoena was served on Mr. Ryan at the El Mirador Hotel in Palm Springs, California, and on two persons associated with him, Helen Hansen and Frank Hayden. If my chronology is correct the subpoena was served on the 26th or 27th of July and returnable the following day, the 28th.

Pursuant to agreement the records that were available at the El Mirador Hotel were handed over to Internal Revenue agents. Subsequently on August 2nd another subpoena was served on the witness, Raymond Ryan, as well as Miss Hansen and Mr. Hayden.

Pursuant to the second subpoena, which required the production of the books of Mawingo, Ltd., Miss Hansen and Mr. Hayden testified before the federal grand jury in this district. Mr. Ryan was excused from testifying at that time. Testimony was given on August 16, [11] 1967.

Subsequent to that date in November of 1967, November 21st, the Internal Revenue Service again served an IRS summons, this time on myself as counsel for Ray Ryan. Again this summons asked, inter alia, that certain records be produced including the records of Mawingo Company, Ltd.

Discussions were had by myself with the Internal Revenue Service agents. No decision really was made as to whether we would comply with the IRS summons or not. The matter was under discussion. As a matter of fact, discussion was had with IRS agents on January 26th of 1968.

On February 2nd a letter was written by the Department of Justice to myself from Mr. Joyce saying that he would like to have Mr. Ryan present at the grand jury in Los Angeles on the 21st day of February, 1968. I pointed out I had a prior commitment and Mr. Joyce very kindly agreed to set the matter over until today.

I would like to point out several reasons, if the court please, why at this stage it would be beyond the juris-

diction of this court to issue the order requested by Mr. Joyce.

In the first place the grand jury for whom Miss Hansen and Mr. Hayden testified and before whom Mr. Ryan was to have testified, which is the March term, 1967 grand jury—pardon me, if the court please. This grand [12] jury of which Mr. Durward L. Robertson was the foreman, was impaneled March 2, 1967. By order of Judge Thurmond Clarke, Chief Judge, United States District Court, dated September 27, 1967, an order was entered. I will read the ordering part of that order.

"It is ordered that the grand jury impaneled March 2, 1967, of which Mr. Durward L. Robertson is foreman, is hereby discharged."

This order is dated September 27, 1967. If the court please, I might say I have been unable to obtain an exemplified copy of the original of that order. It appears to be unavailable. I have, however, obtained—

MR. JOYCE: If the court please, we will stipulate the order was entered. I saw it for the first time this morning. We will stipulate that such order was entered by the court discharging the grand jury.

THE COURT: Is it so stipulated?

MR. MILLER: Yes. If the court please, for the record standpoint it might be helpful to mark as exhibits a copy of the order which we obtained from the clerk which I would mark as Ryan's Exhibit No. 1 for identification and also the civil docket entry.

MR. JOYCE: We have no objection.

THE COURT: Ryan's 1 and 2 in evidence.

THE CLERK: Ryan's Exhibits 1 and 2 received [13] into evidence.

(The documents referred to were marked Ryan's Exhibits 1 and 2 and received in evidence.)

MR. MILLER: If the court please, by reason of this order the grand jury subpoena of August 2, 1967 became defunctus officio. I have a substantial number of cases and case law to support this motion. I do not know how

the court would like to proceed. I can argue the point now.

THE COURT: I would like to hear from the Government on the other side of that.

MR. MILLER: All right, sir.

MR. JOYCE: Your Honor, at this point we are not asking the court to enforce the subpoena that was originally served. We are asking the court to order the witness who is presently in the courtroom within the jurisdiction of the court, who appeared before the current grand jury this morning and who refused to comply with the request and refused to answer any questions with respect to the records.

Our position with respect to the other grand jury is, of course, that counsel had agreed to make Mr. Ryan available at a time mutually satisfactory to both of us. However, whether he was in this courtroom and he was before th[e] grand jury today pursuant to a subpoena that [14] was served in August, or whether he was there pursuant to the agreement—

THE COURT: I want to understand you clearly as to whether or not you are asking this court to order Mr. Ryan to answer questions concerning the records or whether you want this court to order Mr. Ryan to produce those records?

MR. JOYCE: We would like this court to order Mr. Ryan to produce the records before the next grand jury. We do not anticipate taking any testimony from Mr. Ryan except insofar as he will identify the records and state his position as the custodian. Nevertheless, he is here, whether it is voluntarily on his part, whether it is pursuant to agreement with counsel or pursuant to the subpoena he is nevertheless before the court and was before the grand jury this morning.

THE COURT: Let us assume, I think we can for the purposes of the discussion, that this is a proceeding ab initio. In other words, a man comes before the grand jury and is asked, I do not know whether he was asked because I have nothing before me that he was even asked by the foreman of the grand jury to produce any records—

MR. JOYCE: He refused to answer any questions with respect to the records.

THE COURT: He refused to answer any questions. [15] The question then before me is whether or not that is what we are here for or whether we are here to ask him to produce records and whether or not the procedure is the issuance of a grand jury subpoena for April 15, 1968 for the production of records. At this time I think I have the jurisdiction to order him to answer questions if he can without the records present about those records. I do not know that I can order him to produce records. The proper procedure to do that would be by subpoena rather than by order of the court.

MR. JOYCE: We have a subpoena for his appearance on April 15th in this at this grand jury session, your Honor.

I am now handing the defendant a copy thereof serving him with the subpoena. I also believe that your Honor has ample authority to order him to comply with the subpoena that has just been served on him or to order him to bring the records before the court.

THE COURT: The subpoena is for April 15th and he has not said on April 15th he would not produce them.

MR. JOYCE: That is correct.

THE COURT: I do not know whether I can do it in advance, can I? If the man shows up on April 15th we may be back here, this may just be an exercise in futility at this point. Until he refuses there is nothing [16] before the court upon which I can order, is there?

MR. JOYCE: I believe that the court can order him to appear and bring the records with him. However, I also believe the subpoena will suffice.

THE COURT: It is a subpoena situation and I think you may have to take up that problem at that time. I will hear you on the question as to whether or not you want him ordered to answer certain questions before the grand jury at this time.

MR. JOYCE: We would withhold any request for compulsion of his testimony until such time as the grand jury reconvenes on April 15, your Honor.

THE COURT: Is there anything else?

MR. MILLER: No, sir, except that I believe I can safely assume we have our normal right to move to quash if we so desire.

THE COURT: You have all the rights. I do not think we could make an order which would be an order to enforce a subpoena which has not yet been refused so I take it there would be no reason for the proceedings here to continue.

The request for the order to produce records before the grand jury will be denied.

MR. MILLER: Thank you.

THE COURT: Is there anything further?

MR. SHAFFER: Thank you, your Honor.

[Transcript, Vol. 1]

. . . .

[48]

AO Form No. 110 (Rev. 5-60)

Subpoena to Testify Before Grand Jury

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

To Ray Ryan
Director Mawingo Limited
d/b/a Mt. Kenya Saffari [sic] Club
Nanyuki, Kenya

You are hereby commanded to appear in the United States District Court for the Central District of California at 312 N. Spring Street in the city of Los Angeles on the 15 day of April 1968 at 10:00 o'clock A.M. to testify before the Grand Jury and bring with you¹ all books, records, papers, and documents in your possession or under your custody and/or control, either personally or as corporate officer, director, or representative, pertaining to Ryan Investment Limited, Nairobi, Kenya, Mount Kenya Safari Club, Nanyuki and Mairobi [sic], Kenya, Nawingo [sic] Limited, Kanyuki [sic] and Nairobi, Kenya, Zimmerman Limited, P. O. Box 2127, Nairobi, Kenya, and Seven-Up Bottling Co. (Kenya) Limited, Nairobi, Kenya, including but not limited to checkbooks, books of accounting, disbursement journals, and any and all correspondence relating to these five entities, as well as records, books, papers, documents and correspondence relating in any way to the application of the currency control regulations and the foreign

¹ Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

investments protection act of Kenya to these five herein described entities, enterprises or corporations.

This subpoena is issued on application of the United States.

JOHN A. CHILDRESS
Clerk

By ROBERT J. FOLLIS
Deputy Clerk

Date March 5, 1968

WM. MATTHEW BYRNE, JR.
U. S. Attorney
312 North Spring Street
Los Angeles, Calif. 90012

RETURN

Received this subpoena at
and on _____ at _____
within named _____
copy to h _____

on _____
I served it on the _____
by delivering a _____

Date _____, 19____

By _____

Service Fees

Travel _____ \$

Services _____

Total _____ \$

[2]

[Filed Mar. 29, 1968]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 1926 Mis.

In the Matter of the Appearance of

RAYMOND JOHN RYAN,
A Witness

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO QUASH SUBPOENA DUCES TECUM

* * * *

[7]

II

THE WITNESS RYAN WAS IMMUNE FROM
SERVICE OF THE SUBPOENA.

On July 26, 1967, Ryan, a resident of Evansville, Indiana, was subpoenaed in California to appear July 28, 1967, before the federal Grand Jury in Los Angeles and produce records of Mawingo Ltd., d/b/a the Mount Kenya Safari Club [Exhibit "A" hereto]. Some records listing members of the Mount Kenya Safari Club were located in a small office in the El Mirador Hotel, Palm Springs, California. These records were turned over to Internal Revenue Service agents by Miss Hansen and Mr. Hayden, employees of the El Mirador who were also subpoenaed.

On August 2, 1967, new subpoenas were served on Ryan, Hansen and Hayden returnable August 16, 1967 [Exhibit "B" hereto]. Hayden and Hansen appeared before the Grand Jury this date. Ryan did not, there being an arrangement between counsel that he was excused. On September 27, 1967, Chief Judge Thurmond Clark signed an order discharging the Grand Jury be-

fore which Hayden and Hansen had appeared and Ryan had been subpoenaed to appear [Exhibit "C" hereto].

On November 21, 1967, an Internal Revenue Service summons was issued commanding, *inter alia*, the production of Mawingo Ltd. records physically located in Kenya, Africa [Exhibit "D" hereto]. That summons has neither been complied with nor enforced. The Department of Justice by letter dated February 2, 1968, instructed Ryan to appear before the Grand Jury February 21, 1968, pursuant to the subpoena served August 2, 1967 [Exhibit "E" hereto]. The appearance date was subsequently extended to March 5, 1968.

Ryan returned from Africa. On March 5, 1968, the Government requested Judge Real to enter an order requiring [8] Ryan to produce the documents called for by the subpoena. The court denied the Government's request because there was no outstanding process. The August 2, 1967, subpoena was void, *functus officio*, the Grand Jury issuing it having been discharged. The Government thereupon served the witness Ryan with a new grand jury subpoena in the courtroom and in the presence of the court (See transcript of hearing before Judge Real, March 5, 1968). This was faulty service because the witness was immune from process and service in the presence of the court is void.

* * * *

[22-23]

EXHIBIT A TO MEMORANDUM

AO Form No. 110 (Rev. 5-60)

Subpoena to Testify Before Grand Jury

UNITED STATES DISTRICT COURT
FOR THE
EASTERN [sic] DISTRICT OF CALIFORNIA

To Mr. Ray Ryan, Director Mawingo, Ltd., dba
The Mount Kenya Safari Club, Nanyuki, Kenya,
East Africa
c/o El Mirador Hotel, Bungalow 512
Palm Springs, California

You are hereby commanded to appear in the United States District Court for the Central District of California at Rm. 827 U.S.Ct.House, 312 N. Spring Street in the city of Los Angeles on the 28th day of July 1967 at 9:30 o'clock A.M. to testify before the Grand Jury and bring with you¹ 1) All records, papers and documents pertaining to the operation of Mawingo, Ltd. dba Mount Kenya Safari Club, including but not limited to the following:

(1) Lists, card index, ledgers, application forms or any other records showing the identity of the members of the Mount Kenya Safari Club.

(2) Records reflecting the receipt of money by the Mount Kenya Safari Club or its representatives from members or others for initiation fees, dues, special assessments or other purposes.

(3) Records pertaining to the disbursement of money by or on behalf of the Mount Kenya Safari Club such as disbursement papers or other books of accounting,

¹ Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

paid invoices, cancelled checks, check books or other memoranda.

(4) Correspondence dealing with the management, and/or financial affairs of the Mount Kenya Safari Club, its membership, promotion or publicity.

This subpoena is issued on application of the

JOHN A. CHILDRESS
Clerk

By ROBERT J. FOLLIS
Deputy Clerk

Date July 26, 1967

WM. MATTHEW BYRNE, JR.
U. S. Attorney
DAVID R. NISSEN
Asst. U. S. Attorney
Telephone: 688-2422

RETURN

Received this subpoena at
and on _____ at _____
within named _____
copy to h _____

on _____
I served it on the _____
by delivering a _____

Date _____, 19____

By _____

Service Fees _____

Travel _____ \$ _____

Services _____ \$ _____

Total _____ \$ _____

[24-25]

EXHIBIT B TO MEMORANDUM**AO Form No. 110 (Rev. 5-60)****Subpoena to Testify Before Grand Jury****UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

To Mr. Ray Ryan, Director Mawingo, Ltd., dba
The Mount Kenya Safari Club, Nanyuki, Kenya,
East Africa
c/o El Mirador Hotel, Bungalow 512
Palm Springs, California

You are hereby commanded to appear in the United States District Court for the Central District of California at Rm. 827 U.S. Courthouse, 312 North Spring Street in the city of Los Angeles on the 16th day of August, 1967 at 1:30 o'clock P.M. to testify before the Grand Jury and bring with you¹ All records, papers and documents pertaining to the operation of Mawingo, Ltd., dba Mount Kenya Safari Club, including but not limited to the following:

(1) Lists, card index, ledgers, application forms or any other records showing the identity of the members of the Mount Kenya Safari Club.

(2) Records reflecting the receipt of money by the Mount Kenya Safari Club or its representatives from members or others for initiation fees, dues, special assessments or other purposes.

(3) Records pertaining to the disbursement of money by or on behalf of the Mount Kenya Safari Club such as disbursement papers or other books of accounting, paid

¹ Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

invoices, cancelled checks, check books or other memoranda.

(4) Correspondence dealing with the management, and/or financial affairs of the Mount Kenya Safari Club, its membership, promotion or publicity.

This subpoena is issued on application of the United States

JOHN A. CHILDRESS
Clerk

By ROBERT J. FOLLIS
Deputy Clerk

Date August 2, 1967

WM. MATTHEW BYRNE, JR.
U. S. Attorney
DAVID R. NISSEN
Asst. U. S. Attorney
Telephone: 688-2422
DRN:mlm

RETURN

Received this subpoena at
and on _____ at _____
within named _____
copy to h _____

on _____
I served it on the _____
by delivering a _____

Date _____, 19____

By _____

Service Fees

Travel _____ \$

Services _____

Total _____ \$

[26]

EXHIBIT C TO MEMORANDUM

[Filed Sep. 27, 1967]

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIAIN THE MATTER OF THE GRAND JURY IMPANELED
MARCH 2, 1967, FOR THE FEBRUARY 1967
SESSION OF COURT

(Mr. Durward L. Robertson, Foreman)

ORDER DISCHARGING GRAND JURY

It appearing to the Court that the Grand Jury, of which Mr. Durward L. Robertson is the Foreman was impaneled on March 2, 1967 to serve during the February 1967 Session, and that the work of said Grand Jury has been completed;

IT IS ORDERED that the Grand Jury impaneled March 2, 1967 of which Mr. Durward L. Robertson is foreman, is hereby discharged.

DATED: September 27, 1967.

THURMOND CLARKE
Chief Judge
United States District Court

Presented by:

WM. MATTHEW BYRNE, JR.
United States AttorneyROBERT L. BROSIO
Assistant U. S. Attorney
Chief, Criminal DivisionMICHAEL HEUER
Assistant U. S. AttorneyBy MICHAEL HEUER
MICHAEL HEUER
Attorneys for Plaintiff
United States of America

EXHIBIT D TO MEMORANDUM

U. S. Treasury Department—Internal Revenue Service

SUMMONS

In the matter of the tax liability of
Raymond J. Ryan (a/k/a Ray Ryan) & Helen Ryan
600 Lombard Avenue
Evansville, Indiana

Internal Revenue District of Indianapolis, Indiana
Period(s) Years 1957 through 1965, Inclusive

THE COMMISSIONER OF INTERNAL REVENUE

To: Ray Ryan

At: Evansville, Indiana

GREETINGS:

You are hereby summoned and required to appear before Special Agent Glen Johnson, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

See Attachment A setting forth therein the books, records and documents required for production at the time and place designated below. This attachment is incorporated herein and made a part hereof as though it was stated in full on the face of this Summons.

Place and time for appearance:

At The Internal Revenue Service Office, Intelligence Division, 214 S. E. 6th Street, Evansville, Indiana, on the 19th day of December, 1967, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code this 21st day of November, 1967.

ATTESTED COPY

Signature: Glen Johnson

Title: Special Agent

[28]

ATTACHMENT A

- (A) The following described records of the RYAN OIL COMPANY, 218 Court Building, Evansville, Indiana, for the year 1965:
- (1) General Journal and Voucher Register
 - (2) Cash Receipts Journal
 - (3) Billing Journal
 - (4) Cash Disbursement Journal
 - (5) General Ledger
 - (6) All underlying documents relating to general journal and adjusting entries (folders referred to as Journal Vouchers)
 - (7) Copies of all Invoices
 - (8) Bank statements, cancelled checks and copies of deposit tickets
 - (9) Workpapers used in connection with the preparation of the RYAN OIL COMPANY Federal tax return filed for the year 1965
 - (10) Subsidiary Ledgers relating to the general ledger entries

- (B) Copies of all bank statements; cancelled checks and correspondence relating to all bank accounts maintained at the COMMERCIAL CREDIT BANK, Zurich, Switzerland, under the names of RAY or HELEN RYAN; RYAN INVESTMENTS LIMITED; MOUNT KENYA SAFARI CLUB and MA-WINGO LIMITED, for the years 1959 through 1965, inclusive.
- (C) Copies of all bank statements; cancelled checks and all correspondence relating to the bank account maintained at the BARCLAYS BANK, D. C. O., Nanyuki, Kenya, under the name of RAY RYAN during the years 1959 through 1965, inclusive.
- (D) Copies of all bank statements; cancelled checks and all correspondence relating to the bank account maintained at the BARCLAYS BANK, D. C. O., Nairobi, Kenya, under the name of RAY RYAN during the years 1959 through 1965, inclusive.

[29]

EXHIBIT E TO MEMORANDUM
UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20530

Address Reply to the Division Indicated
and Refer to Initials and Number

FMV:ETJ:cav
123-66

Herbert J. Miller, Jr., Esq.
1701 K Street, N. W.
Washington, D. C.

February 2, 1968

Dear Mr. Miller:

In accordance with the request of Mr. Cassidy of your firm, I am herewith confirming the telephone conversation between him and Mr. Edward Joyce of the Organized Crime Section of the Criminal Division.

As stated, Mr. Ray Ryan, your client, was served with a subpoena duces tecum to appear before a Federal Grand Jury at Los Angeles, California on August 16, 1967. At that time he was excused from appearing and producing records upon the agreement that he would be present at any future meeting of the Grand Jury upon proper notification.

I am hereby notifying you that Mr. Ryan's presence before the said Grand Jury pursuant to the aforementioned subpoena will be required at 10:00 A.M. on Wednesday, February 21, 1968 at the Federal Court-house in Los Angeles, California.

Sincerely,

FRED M. VINSON, JR.
Assistant Attorney General
Criminal Division

By: /s/ Henry E. Petersen
HENRY E. PETERSEN
: Chief, Organized Crime and
: Racketeering Section

[30]

EXHIBIT F TO MEMORANDUM

Post Office Box 104

August 1, 1966

Mr. Raymond J. Ryan
Mount Kenya Safari Club
Nanyuki, Kenya

Dear Mr. Ryan:

As you know the Internal Revenue Service has been examining the Federal income tax returns filed by you and your wife, Helen, for the years 1957 through 1965. In this connection, it was necessary to audit the records of the Ryan Oil Company, Evansville, Indiana, as well as several other business entities located in the Palm Springs, California, area in which you have or had a financial interest.

Under date of September 13, 1965, you gave Messrs. William Gorman and Wilbur Dassel, Power of Attorney to represent you during the course of this income tax investigation. Mr. Gorman and your Attorney, Mr. Dassel, have informed me that they have discussed the audit of your tax returns with you and that you expressed the desire to cooperate fully with the Internal Revenue Service. Accordingly, Mr. Gorman has voluntarily submitted the books and records of the Ryan Oil Company for audit purposes. We sincerely appreciate the cooperation you have extended through Mr. Gorman.

We have now reached the point where most, if not all of the audits in the Palm Springs area will be closed within the very near future. Undoubtedly, you will receive copies of the Internal Revenue Agents' reports through Mr. Gorman or your West Coast representatives.

We cannot complete the audit of your individual returns until we have had an opportunity to examine records

relating to your business ventures in Kenya. Mr. Gorman states that the books and records of these ventures are under your control and are physically located in Kenya. He has suggested that we write directly to you regarding the proposed examination of those records.

[31]

The Internal Revenue Service is tentatively planning to send a representative to Kenya for the purpose of examining the books and records of your business ventures in that country. It is hoped that a determination will then be made as to whether or not the profits or losses resulting from these foreign operations are subject to the United States Income Tax Laws. However, before making such a trip we would like your assurance that the applicable records will be made available to the examining agent.

We will appreciate an early reply indicating whether or not you will consent to the examination of the records of your business ventures in Kenya and, if so, the name of the person, or persons, who will make these records available to our representatives.

Very truly yours,

/s/ Glen Johnson
GLEN JOHNSON
Special Agent
Intelligence Division

c.c.

William J. Gorman
c/o Ryan Oil Company
Evansville, Indiana
Wilbur Dassel
Attorney-at-Law
Evansville, Indiana

[32]

EXHIBIT G TO MEMORANDUM**U. S. Treasury Department—Internal Revenue Service****SUMMONS****To Wilbur Dassell**

**In the matter of the tax liability of
Raymond J. Ryan (a/k/a Ray Ryan) and Helen Ryan
600 Lombard Street, Evansville, Indiana, or,
218 Court Building, Evansville, Indiana**

**Internal Revenue District of Indianapolis, Indiana
Period(s) For the calendar years 1957
through 1965, inclusive**

THE COMMISSIONER OF INTERNAL REVENUE

**To: Ray Ryan, Director of the following Corporations:
(1) Mount Kenya Safari Club Establishment,
Liechtenstein; (2) Ryan Investments, Limited,
Kenya, East Africa; (3) Mawingo Limited, Kenya,
East Africa**

At: 600 Lombard Street, Evansville, Indiana

GREETINGS:

**You are hereby summoned and required to appear
before Special Agent Glen Johnson, an officer of the
Internal Revenue Service, to give testimony relating to
the tax liability or the collection of the tax liability of
the above named person for the period(s) designated
and to bring with you and produce for examination the
following books, records, and papers at the time and
place hereinafter set forth:**

See Attachments A, B and C, setting forth therein the books, records and documents required for production at the time and place designated below. These attachments are incorporated herein and made a part hereof as though they were stated in full on the face of this Summons.

Place and time for appearance:

At the Internal Revenue Office, Intelligence Division, 214 S.E. 6th Street, Evansville, Indiana on the 3rd day of January 1967, at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code this 18th day of November, 1966.

ATTESTED COPY

Signature: Glen Johnson
GLEN JOHNSON

Title: Special Agent

EXCERPTS FROM THE INTERNAL REVENUE CODE

Sec. 7602. EXAMINATION OF BOOKS AND WITNESSES.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Sec. 6420. GASOLINE USED ON FARMS.

* * * *

(e) Applicable Laws—

(2) Examination of Books and Witnesses.—For the purpose of ascertaining the correctness of any claim made under this section or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

Sec. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.

* * *

(f) Applicable Laws—

(2) **Examination of Books and Witnesses.**—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

Sec. 7603. SERVICE OF SUMMONS.

A summons issued under section 6420(e) (2), 6421(f) (2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Sec. 7604. ENFORCEMENT OF SUMMONS.

(a) **Jurisdiction of District Court.**—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) **Enforcement.**—Whenever any person summoned under section 6420(e) (2), 6421(f) (2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as

required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Sec. 7605. TIME AND PLACE OF EXAMINATION.

(a) Time and Place.—The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), or 7602 shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2) or 6421(f)(2), the date fixed for appearance before the Secretary or his delegate shall not be less than 10 days from the date of the summons.

Sec. 7210. FAILURE TO OBEY SUMMONS.

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 7602, 7603, and 7604 (b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

[34]

ATTACHMENT A

Ray Ryan, Director

MOUNT KENYA SAFARI CLUB ESTABLISHMENT,
Leichtenstein [sic]

(A corporation operating in Kenya, East Africa)

The following records of MOUNT KENYA SAFARI CLUB ESTABLISHMENT:

1. Copies of Articles of Incorporation and/or agreements relating to the incorporation or formation of the Mount Kenya Safari Club Establishment, a company incorporated in Leichtenstein in or about December 1959.
2. General ledgers for the period from December 1, 1959 through June 30, 1963.
3. Cash receipts and disbursement journals for the period from December 1, 1959 through June 30, 1963.
4. Copies of balance sheets and profit and loss statements for the period from December 1, 1959 through June 30, 1963.
5. Copies of audit reports for the period from December 1, 1959 through June 30, 1963.
6. Copies of all bank statements and canceled checks for the period from December 1, 1959 through June 30, 1963.
7. Copies of bank deposit tickets for the period from December 1, 1959 through June 30, 1963.
8. Correspondence files; agreements and other documents relating to the acquisition by the MOUNT KENYA SAFARI CLUB ESTABLISHMENT of the shares of stock in a corporation known as MAWINGO LIMITED, Kenya, East Africa.

9. Correspondence files; agreements and other documents relating to the registration of the shares of stock of MAWINGO LIMITED in the name of Commercial Credit Bank, Zurich, Switzerland, as nominee of the MOUNT KENYA SAFARI CLUB ESTABLISHMENT.
10. Copies of all income tax returns filed by the MOUNT KENYA SAFARI CLUB ESTABLISHMENT with the Government of Kenya during the years 1959 through 1963.
11. Corporate minute books or similar records maintained by the MOUNT KENYA SAFARI CLUB ESTABLISHMENT.
12. Copy of the order of dissolution and applicable attachments relating to the dissolution of the MOUNT KENYA SAFARI CLUB ESTABLISHMENT.

[35]

13. Copies of all Statutory Declarations filed by, or on behalf of, the MOUNT KENYA SAFARI CLUB ESTABLISHMENT with the Government of Kenya during the years 1959 through 1963.

[36]

ATTACHMENT B

Ray Ryan, Director

RYAN INVESTMENTS, LIMITED
KENYA, EAST AFRICA

The following records of RYAN INVESTMENTS LIMITED:

1. Copies of Articles of Incorporation and/or agreements and correspondence relating to the incorporation and formation of the RYAN INVESTMENTS, LIMITED, a Kenya, East Africa corporation formed on or about December 6, 1961.

2. General ledgers for the period from December 6, 1961 through December 31, 1965.
3. Cash receipts and disbursement journals for the period from December 6, 1961 through December 31, 1965.
4. Copies of balance sheets and profit and loss statements for the period from December 6, 1961 through December 31, 1965.
5. Copies of audit reports for the period from December 6, 1961 through December 31, 1965.
6. Bank statements and canceled checks for the period from December 6, 1961 through December 31, 1965.
7. Copies of all bank deposit tickets for the period from December 6, 1961 through December 31, 1965.
8. Correspondence files; agreements and other documents relating to the transfer of equity in the MOUNT KENYA SAFARI CLUB ESTABLISHMENT to RYAN INVESTMENTS, LIMITED on or about February 16, 1963.
9. Correspondence files; agreements and other documents relating to the transfer of stock by the Commercial Credit Bank, Zurich, Switzerland in a corporation known as MAWINGO LIMITED to RYAN INVESTMENTS, LIMITED.
10. Copies of all income tax returns filed by RYAN INVESTMENTS, LIMITED with the Government of Kenya during the years 1961 through 1965.
11. The corporate minute book or similar records maintained by the RYAN INVESTMENTS, LIMITED.

[37]

12. The corporation stock record book showing the stockholders and transfers of RYAN INVESTMENTS, LIMITED since the date of incorporation.

13. Copies of all Statutory Declarations including attachments, filed by, or on behalf of, the RYAN INVESTMENTS, LIMITED with the Government of Kenya during the years 1961 through 1965.
14. Correspondence files; agreements, copies of notes, mortgages or other evidence of indebtedness relative to loans or advances made by RYAN INVESTMENTS, LIMITED during the years 1961 through 1965, inclusive, to individuals, companies, or other entities.
15. Correspondence files, agreements, copies of notes, mortgages or other evidence of indebtedness relative to loans or advances received by RYAN INVESTMENTS, LIMITED from individuals, companies, or other entities.

[38]

ATTACHMENT C

RAY RYAN, DIRECTOR
MAWINGO LIMITED
KENYA, EAST AFRICA

The following records of MAWINGO LIMITED.

1. The stock record book showing the stockholders and stock transfers of MAWINGO LIMITED since December 1, 1959.
2. The stock minute book or similar records maintained by the MAWINGO LIMITED since December 1, 1959.
3. General ledgers for the period from December 1, 1959 through December 31, 1965.
4. Cash receipts and disbursement journals for the period from December 1, 1959 through December 31, 1965.

5. Copies of balance sheets and profit and loss statements for the period from December 1, 1959 through December 31, 1965.
 6. Copies of audit reports for the period from December 1, 1959 through December 31, 1965.
 7. Bank statements and canceled checks for the period from December 1, 1959 through December 31, 1965.
 8. Copies of all bank deposit tickets for the period from December 1, 1959 through December 31, 1965.
 9. Correspondence files; agreements, copies of notes, mortgages or other evidence of indebtedness relative to loans or advances received by MAWINGO LIMITED from individuals, companies or other entities during the period from December 1, 1959 through December 31, 1965.
 10. Correspondence files; agreements, copies of notes, mortgages or other evidence of indebtedness relative to loans or advances made by MAWINGO LIMITED to individuals, companies or other entities during the period from December 1, 1959 through December 31, 1965.
 11. Correspondence files or other documents relative to transfer of MAWINGO LIMITED stock to Commercial Credit Bank, Zurich, Switzerland, as nominee of corporation known as Mount Kenya Safari Club Establishment.
-

[50]

[Filed Apr. 8, 1968]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 1926 Mis.

In the Matter of the Production of Records by
RAYMOND JOHN RYAN,
A Witness

AFFIDAVIT OF WILLIAM SHIRLEY DEVERELL IN SUPPORT
OF MOTION TO QUASH SUBPOENA DUCES TECUM

[51]

AFFIDAVIT

I, WILLIAM SHIRLEY DEVERELL, of Post Office Box Number 111, Nairobi, Kenya make oath and say as follows:—

1. That I am an Advocate admitted to practice in the Courts of the Republic of Kenya, Africa, and am a Partner in the firm of Kaplan & Stratton, Advocates, P.O. Box 111, Queensway House, York Street, Nairobi, Kenya.
2. That I read Law and received a Bachelor of Arts Degree in Jurisprudence at Trinity College, The University of Oxford, England.
3. That I was called to the Bar at Grays Inn, in London in 1960.
4. That I was admitted to practice as an Advocate in the Courts of the Republic of Kenya in 1962. Subsequent to that time I have engaged full time in the practice of Law in the Republic of Kenya and have become fully conversant with the Statutes and Decisions forming the Laws of the said Republic.

5. That I have examined what purports to be a true copy of a Subpoena issued by the United States District Court for the Central District of California which copy is now produced to me and marked "W.S.D. 1" and I state, based on my experience as a Practitioner of Law in the said Republic of Kenya that a compliance with the provisions of that Subpoena by Mr. Ray Ryan if he were a Corporate Officer of [52] the Companies referred to therein would violate the Laws of Kenya. I am informed by Mr. J. B. Story, a Director of P. & M. Limited, which Company is the Company Secretary for Ryan Investments Limited, Mawingo Limited, and Zimmermann Limited, and I verily believe that Mr. Ray Ryan is not currently a Director or other Corporate Officer of any of these three Companies.
6. That I have formed the above opinion after perusing Section 147 of the Companies Act of Kenya which provides that the Books of Account of a Kenya Corporation may not be kept outside of Kenya without the consent of the Registrar of Companies who is a Public Official in the service of the Government of Kenya.
7. That Section 147 (1) provides in part that "every Company shall cause to be kept in the English language proper Books of Account with respect to (a) all sums of money received and expended by the Company in the matters in respect of which the receipt and expenditure takes place: (b) all sales and purchases of goods by the Company; (c) the assets and liabilities of the Company."
8. That Section 147 (3) (a) (b) provide as follows—
"(a) The Books of Account shall be kept [53] at the registered office of the Company or, subject to the provisions of paragraph (b) of this subsection, at such other place as the directors think fit, and shall at all times be open to inspection by the directors."

“(b) The Books of Account shall only be kept at a place outside the Republic with the consent of the registrar and subject to such conditions as he may impose: and if Books of Account are kept at a place outside the Republic there shall be sent to, and kept at a place in, the Republic, and be at all times open to inspection by the directors, such accounts and returns with respect to the business dealt with in the Books of Account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months.”

9. That on the basis of the above provisions and my experience of the Law of Kenya, I conclude that it would be illegal for the above-mentioned documents to be removed from the country. An exception could be made with reference to Books of Account only if the Registrar of Companies were to give his consent. I am informed by the Registrar of Companies, and verily believe that consent to the keeping of the Books of Account outside the Republic [54] of Kenya is normally only given where a Company registered in Kenya has its principal office in another Country, in which case consent is given for the Books of Account to be kept in that Country. I am further informed by the Registrar of Companies and verily believe that he would not consent to the removal of the Books of Account from Kenya for the purpose of producing them in Foreign Court proceedings.
10. That S.112 (2) of the Companies Act provides as follows:—

“The register of members shall be kept at the registered office of the Company: Provided that:—

- (a) if the work of making it up is done at another office of the company, it may be kept at that other office, and

(b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside the Republic.

11. That S.113 (3) of the Companies Act provides that the Index of members shall be kept in the same place as the register of members.
- [55] 12. That S. 146 (1) provides that the Minute Book containing Minutes of General Meetings of the Company shall be kept at the registered office of the Company.
13. That in view of the above Section of the Companies Act I consider it to be contrary to the Law of the Republic of Kenya for the Register of Members, the Index of Members, the Minute Book or the Books of Account of a company incorporated in Kenya to be removed outside the Republic of Kenya.
14. That none of the documents, papers or correspondence prepared or filed by a company or the authorities relating to the application of currency, control regulations and the Foreign Investments Protection Act are public documents.

/s/ Wm. Deverell

SWORN by the above-named WILLIAM SHIRLEY DEVERELL at Nairobi this 28th day of March, One thousand nine hundred and sixty-eight.

Before me:

/s/ U. S. Kalsi

U. S. KALSI
Commissioner for Oaths
Advocate—Nairobi

. . . .

[Transcript, Vol. 3]

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MANUEL L. REAL, JUDGE PRESIDING

Misc. Grand Jury

In the Matter of

RAYMOND RYAN,

A witness before the Grand Jury

• • • •

[2]

APPEARANCES:

For the Department of Justice:

WM. MATTHEW BYRNE, JR.

United States Attorney

EDWARD JOYCE

PHILIP MICHAEL

Department of Justice

Washington, D.C.

For the Witness Raymond Ryan:

SIMON, SHERIDAN, MURPHY, THORNTON
& MEDVENE

625 South Kingsley Drive

Los Angeles, California; by

THOMAS C. SHERIDAN

WILLIAM SIMON; and

HERBERT J. MILLER, JR.

Washington, D.C.

[3] LOS ANGELES, CALIFORNIA
TUESDAY, APRIL 9, 1968, 2:00 P.M.

* * *

[14] MR. MILLER: * * *

* * *

[16] * * * I respectfully request the court modify the return date on the subpoena to May 15, some date in that area, with the understanding that the Sheridan firm and my firm are going to immediately approach the Department of Justice and ask them for a clarification on this matter.

* * *

[19] MR. JOYCE: Your Honor, with respect to the question of modification of the subpoena if the subpoena is modified as Mr. Miller has requested to May 15, I would request the court set down the hearings on the motions.

THE COURT: I was going to modify it to May 22nd and set down the hearings—

MR. JOYCE: For May 15th?

THE COURT: No, not for the 15th. Assuming this goes forward how long do you think this will take?

MR. SHERIDAN: The hearing, your Honor, a couple of hours.

THE COURT: All right, Tuesday the 14th at 11:00 a.m.

[20] MR. JOYCE: The subpoena is modified until 10:00 a.m.?

THE COURT: It is modified for return on May 22, 1968 at the same time and place.

The hearing on the motion to quash the subpoena will be set for May 14, 1968 at 11:00 a.m.

* * *

[30] LOS ANGELES, CALIFORNIA,
TUESDAY, MAY 14, 1968, 11:00 A.M.

* * * *

[50] MR. SHERIDAN: I would be asking as part of the motion, I have not personally talked with Mr. Hirschman, but I would be asking as part of the motion—certainly the Grand Jury subpoena is an order of the court through the Grand Jury. If, and if this court—there is a communication in writing from Mr. Hirschman to the best of my knowledge, which is extremely limited since I don't know the man and have never met him, he is planning on behing [*sic*] here. He has given us in the letter the date of departure as to when he intended to leave Switzerland. He has requested through Mr. Miller that a motion be made to quash the Grand Jury subpoena. I have difficulty in reading the subpoena. For whatever it is worth if this court orders the Grand Jury subpoena as it now calls for his appearance in Los Angeles on the 22nd that court order will, of course, be given to the defendant. Insofar as the Grand Jury subpoena if at all it itself is valid this court obviously has the power to continue the return date on a Grand Jury subpoena.

THE COURT: Not without the appearance of the person being subpoenaed. I do not think I could just send out a letter and say by letter we have just continued your appearance in the subpoena until some other date.

MR. JOYCE: I agree with your Honor. There [51] is no jurisdiction of the court over the person until he appears in the courtroom. I don't think there is any jurisdiction—

MR. SHERIDAN: You can modify a subpoena.

THE COURT: Yes, but I can only modify it with the people involved present. I cannot modify it without their presence or a waiver of their presence.

MR. SHERIDAN: What kind of authority—what I don't understand is it is a court order that was—

THE COURT: To appear on a particular date.

MR. SHERIDAN: Served on him in New York in the first place.

THE COURT: Personally served on him. It will take a new personal service to change that date, at least in my opinion it would.

MR. JOYCE: I agree. He would have to be personally here and in court.

THE COURT: A new personal service here, he would have to be within the court's jurisdiction for that date to be changed. That is my opinion.

MR. SHERIDAN: Doesn't he submit himself to some extent to the court's jurisdiction by authorizing us to be here to ask for a continuance to give him time to move to quash the subpoena?

THE COURT: I don't believe so, Mr. Sheridan. [52] Let us take the situation of a summons or any matter in which a defendant comes in in a criminal case and his counsel comes in on the date the defendant was supposed to appear. Counsel says my man is sick or my man is not here. The court continues the matter just on that basis without issuing a bench warrant. The date comes and the man does not appear, he is not in contempt of this court.

MR. SHERIDAN: Not unless it can be proven that it was—I convicted a man, your Honor, of failure. Judge Yankwich sentenced him. A man who was sentenced went out on appeal—this is before there was a bail jumping statute—and he was convicted of contempt of the court order remanding him into custody which was stayed by appeal. When the appeal was terminated and he went to Mexico and when we finally got him back, five years later, he was convicted. This went up on appeal and the Ninth Circuit affirmed the conviction. He was convicted on a failure, of a contempt based upon his failure to respond to the court order remanding him into custody when he was sentenced even though the order remanding him into custody was then stayed by an appeal bond.

THE COURT: You may be able to argue that at that time but—

MR. SHERIDAN: Unless he has personal [53] notice of it—

THE COURT: I am of the opinion unless there is other authority on the question of a subpoena or summons that the individual has to be before the court before anything can be changed on that summons as to the date.

MR. MILLER: If the court please, if my memory serves me right there is a Supreme Court decision, United States v. Blackmer which was decided in the late twenties or early thirties, I do not have the citation. It is my recollection that that case dealt with a subpoena and the variations that we are talking about now. The Supreme Court held—

THE COURT: We do not have to decide that matter because there is no motion. I will look at that case.

MR. MILLER: All right.

THE COURT: This matter will be continued. I think we better continue it to June 11, since I can give you more time on a Tuesday than I could on a Monday. This stands continued to June 11, 1968 at 11:00 a.m.

MR. SHERIDAN: That is the hearing on the motion, your Honor?

THE COURT: The hearing on the motion. And the matter of appearance before the Grand Jury of [54] Mr. Ryan, who has appeared in this court, will be set for June 12, 1968.

MR. JOYCE: Your Honor, I hate to ask for time but Mr. Michael and I have a trial in Columbus, Ohio on the 3rd of June. I have a Grand Jury in Alexandria, Virginia on the 12th of June. I have a trial in Toledo, Ohio on the 17th of June. I wonder if we can make it, well, we expect to be back here—

THE COURT: When do you want it?

MR. JOYCE: I would ask that it go into July.

THE COURT: July 2nd?

MR. JOYCE: Yes, your Honor.

THE COURT: All right.

MR. JOYCE: But we still have a Grand Jury sitting here on the 22nd as I understand.

THE COURT: There is nothing before me as to Mr. Hirschman.

The matter of Ryan is continued to July 2, 1968 at 11:00 a.m. The subpoena for Mr. Ryan is extended to July 3, 1968 for appearance before the Grand Jury.

MR. MILLER: If the court please, in view of the fact that records subpoenaed by affidavit on file with this court are indicated to weigh approximately a ton, [55] I wonder if the Grand Jury appearance of Mr. Ryan could be set maybe five days after the hearing. If the motion is denied then I assume—

THE COURT: You have no objection to it going to the 10th then?

MR. JOYCE: The 2nd for the hearing—

THE COURT: The 2nd for the hearing on the motion and the 10th for the Grand Jury subpoena.

MR. JOYCE: That would be fine.

THE COURT: Then the matter of Ray Ryan quashing the subpoena will be continued to July 2, 1968. The ordered appearance of Mr. Ryan before the Grand Jury will be continued to July 10, 1968 at 9:30 a.m.

MR. SHERIDAN: You did say 11:00 a.m. on July 2nd?

THE COURT: 11:00 a.m. on July 2nd.

* * *

[63] LOS ANGELES, CALIFORNIA,
WEDNESDAY, JULY 10, 1968, 1:30 P.M.

* * *

[75] MR. MILLER: I would say this in so far as
[76] I am concerned the proper way to proceed in this case. In many of the cases cited in the memorandum which we submitted the courts have gone to the point and said that this is the proper way to do it. Through the utilization of letters rogatory that through the utilization of existing processes, such as an application by the Government itself to the registrar or the government of Kenya, that under these circumstances it could well be that these documents could be examined and in fact photocopied were they currently in Kenya. I would submit, if the court please, that in the Chase Manhattan case in the District Court decision and also in the Court

of Appeals, the court specifically pointed out where this issue of legality under foreign law was concerned that the proper way to proceed under these circumstances would be to have the Federal Government make a representation to the government of Panama and seek to obtain the records.

I am happy to see that Government counsel has in effect suggested that such a type of procedure would in fact be, should be followed in this particular case. I would think it should be followed in this case again as I mentioned before because of the very practicalities of the situation. If those records were lost in transit we would have a very difficult time convincing [77] anybody that it was not Mr. Ryan's fault. That I know and I am sure Mr. Ryan knows that. The way to avoid this physical transporting problem, the cost involved and things of that nature, would be for the Government to take such steps as is necessary under the form of letter rogatories, all this type of method which is suggested by many people that have considered this problem and utilized that method to obtain the documents rather than force an individual who voluntarily came to the United States to go back and assume this rather substantial burden. I won't dwell on the point any more except again to refer to the cases cited in the memorandum submitted to the court.

Now in addition to these factors the compliance with the subpoena would in fact be a violation of the criminal laws of Kenya.

THE COURT: Not all of it from the way I read the law of Kenya, only the books of account.

MR. MILLER: And list of members as I recall.

THE COURT: Yes, the list of members. But the books of account, that would not include correspondence.

MR. MILLER: It may well not. Basically as I understand what the Government desires in terms of records, the basic thrust of the records, the basic [78] records which it desires cannot in fact be produced without a violation of criminal laws of the state of Kenya. Here again is another reason why the suggestion that the Government made should in fact be followed because if the court please I am not an expert in the laws of Kenya.

I contacted a Mr. Devereaux who I understand is a very well known barrister or solicitor. It was his opinion, which is embodied in an affidavit which was submitted to the court. When that same type of problem has arisen the courts of the United States have without fail said that they will not require an individual subject to process of the courts of the United States to do an act that is a violation of criminal law of a foreign country. Again the cases are cited in the memorandum. That is still good law today and there is no question about it.

So consequently here again the courts have suggested, let the Government apply to the government of Kenya. For example, in the Chase Manhattan case where they suggested that a representation be made by the Government of United States to the government of Panama where the production of books and records would have resulted in a fine, I think, if done improperly. The court would not permit its processes to be used to commit an act which would be violative of the laws of a [79] foreign jurisdiction.

I have if the court desires in a more complete copy of the law of Kenya which I obtained in affidavit form from the custodian at the Library of Congress. If the court please, it might be of some help in deciding this. I would like to submit it to the record.

THE COURT: All right.

MR. JOYCE: We also have a photographic copy of the companies law of Kenya. In order to avoid any confusion maybe we should compare them before they are submitted.

THE COURT: That might be wise.

MR. MICHAEL: They both came from the same place. We endeavored to bring the book but there is only one in the entire city so the Library of Congress would not release it.

MR. MILLER: Apparently it is from the same book. I do not believe there will be any difficulty.

THE COURT: All right.

(The document was passed to the court.)

THE COURT: We will attach this to the motions.

* * * *

[92] MR. MILLER: * * *

Aside from the legal issues which I have in fact read we have the further problem as exemplified by the affidavits filed with the court. There is a question of the capability and the competency of Mr. Ryan to comply with this subpoena.

THE COURT: That aspect intrigues me as to whether or not he has custody of those documents.

MR. MILLER: It not only intrigues me, I am convinced he does not. He certainly does not have physical custody of the records. We can start off with that assumption because the records are not here, they are in Kenya. Mr. Ryan is here.

The next question is does he have the authority to order the production of the documents. And I say based on the fact that he no longer is a director of these companies, that he no longer has the authority, the requisite control factor which is required for him to direct somebody to turn records over.

Now, absent that, of course, there is no way in which he can comply with the summons, even the subpoena, assuming the court demands or suggests that [93] will not quash, in which event then, of course, it has to be complied with.

THE COURT: Isn't that a matter of appearance before the Grand Jury and testimony by Mr. Ryan before the Grand Jury that he is not the custodian of records and could not produce them?

MR. MILLER: I would think not. It seems to me this issue can be raised as presented here.

THE COURT: It is a factual issue. Certainly the law is clear he is not the custodian or does not have control of the records. There is no way he can produce them. You cannot force somebody to do something they cannot do.

MR. MILLER: That is correct. That is correct; I agree with it.

THE COURT: I wonder whether or not that has to be taken up by questions and answers and saying I am not the custodian. I don't have the records.

MR. MILLER: If the court please, I do not see any reason why it cannot be raised at this stage that the return day of the subpoena, if he comes in, and let's suppose he then really is at the point of being somewhat in jeopardy from a contempt standpoint, that is why as I understand it it is permissible under the rules to file motions in advance to quash subpoenas so that [94] there can be a prior determination without placing the individual in any type of jeopardy as to what his rights are vis-a-vis the subpoena.

THE COURT: No, but the difference is, Mr. Miller, that there is no affidavit by Mr. Ryan that he is not the custodian and does not have custody or control of these records. Isn't that the most crucial question?

MR. MILLER: If the court please, if you will examine the affidavits filed by the Federal Government supporting their opposition I think that you will find an affidavit by Mr. Ryan. * * *

* * * *

[95] MR. MILLER: If the court please, here is one of the difficulties with trying to ascertain facts and law with respect to documents located in Kenya. This again highlights the point that I was trying to make earlier that the way to proceed in this type of a matter where you have these documents would be to go to the letters rogatory and in fact take these steps which have been outlined in the various cases cited to the [96] court.

THE COURT: Mr. Joyce, why don't you want to do that?

MR. JOYCE: Your Honor, we have endeavored to use diplomatic channels. We have been informed by the State Department that the Attorney General of the government of Kenya because of his close relationship with Mr. Ryan will not permit us to utilize any of the processes of the state of Kenya to acquire the records.

MR. MILLER: If the court please, this is the first time I have heard of this. I would hope that there was some basis that we could put in the record for that statement. What you are basically saying is that the Attorney General of Kenya by reason of a personal rela-

tionship is not going to comply with whatever his duties are.

MR. JOYCE: I have just stated that exactly, Mr. Miller, that because of the relationship between Mr. Ryan and Mr. Ryan's use of whatever he used on the Attorney General, the Ambassador has informed us that there is no prospect of acquiring any cooperation from the state of Kenya.

MR. MILLER: This is news to me. I would think that the proper way to proceed under these circumstances would be to attempt—I find it hard to believe [97] that responsible Government officials are not going to do the job they are called upon to perform. I can't believe Mr. Ryan has the influence that you refer to. Maybe he has but I sincerely doubt it.

THE COURT: Why doesn't the Ambassador want to try?

MR. JOYCE: The Ambassador has tried.

THE COURT: To test the problem?

MR. JOYCE: The Ambassador has tried and we have been unsuccessful.

MR. MILLER: If the court please—

MR. JOYCE: Your Honor, he has had two meetings with the Attorney General of the government of Kenya. He has been informed that there will be no cooperation whatsoever with the United States in this proceeding.

THE COURT: Why don't you have that fellow give us an affidavit.

MR. JOYCE: The Ambassador?

THE COURT: Yes. That might answer the problem.

MR. MILLER: I would think we would be entitled to it.

MR. JOYCE: That may present a problem if it is not a sealed document and the State Department [98] is not assured that—

THE COURT: We can put it under seal of this court, there is no problem with that at all.

MR. MICHAEL: Your Honor, so far as the Ambassador, there are problems of comity and problems of relationships between the United States and Kenya. You may be aware the former Ambassador of the United

States is a man by the name of William Atwood. When he left his position as Ambassador he recently wrote a book dealing with the bureaucracy of Kenya in which he tore them to shreds.

THE COURT: We can put it under seal of the court and that will take care of any sensitivity there might be.

MR. MICHAEL: In a sense, but I am sure from our communications with the Ambassador he is not going to commit to paper after the prior problems with Kenya and the troubles of Africa that the Attorney General of Africa, who is a very close friend of the president of Kenya, is going to commit to paper under any safeguards that he may be sure of refusal to comply with a request of the United States solely because of the business interests of an American citizen in the country of Kenya. The cases cited, your Honor—

THE COURT: Let me ask you this, Mr. [99] Michael. Mr. Joyce has indicated that to this court, is that any less sensitive or more sensitive than a report by the Ambassador? He has told us what the Ambassador has said. That is part of the record, it does not have to be made public, but this writing would not be made public but should be made so that I have some basis to make a determination. If there are procedures that are open to the Government shouldn't they be required to take those procedures? Certainly we have the document, we hear it every day, exhaustion of administrative remedies, when the Government wants litigants against them to come up with procedures that are proper there are ways. If there are procedures which can be employed and are employable maybe they should be restricted to that. If they are not employable then I am sure the aid of this court can be had in taking care of that.

MR. JOYCE: Your Honor, we have in our possession on a confidential basis the State Department communications. We cannot put them into the record but will lodge them with the court at this point without getting a clearance from the State Department. We will attempt to get the clearance from the State Department to have them sealed and made a part of the record of this hearing upon the assurance that they will be sealed.

THE COURT: It will be the order of the [100] court that if any documents are filed at the request of the United States department they will be under seal for examination by the court in camera and will remain sealed until further order of the court.

* * * *

[109] **MR. JOYCE:** Directing your attention to the Kenya law, Kenya law requires that the books of account and all records be kept available and open for inspection by any of the directors of any of the members of the corporation. Kenya law does not prohibit the making of copies and then making of copies and making them available to foreign governments, the United States in this case. It does not make it a criminal offense for the officer or director to have complied with an order of the court producing those copies. Far from it. The thrust of the Companies Act would seem to be that all of the documents in a company in Kenya are to be kept open and available and are to be kept at least available for anyone in some instances, that is any person may get a copy of the documents by paying a fee of not more than two shillings. Certainly the directors are entitled to all of the documents and may make copies of all of the documents.

[110] I was somewhat surprised to hear the allegation that if he complied in any way he would violate the Kenya law because insofar as I was able to read the—

THE COURT: Compliance with subpoena, I take it I could order him to make copies available to you as compliance with the subpoena. But compliance of the subpoena would require the bringing of the original books, not copies.

MR. JOYCE: The compliance with the subpoena would be sufficient for purposes of this Grand Jury to have the same compliance that was permitted and directed as a matter of fact in the De Artemisa case.

THE COURT: I understand that but that was by direction of the court. The director could not on his own bring copies of the records and say this is an answer to the subpoena. The subpoena calls for the records—

MR. JOYCE: There is no—

THE COURT: In answer to the subpoena the records would have to be removed from Kenya. The books of account and a list of the members would be in violation of Kenya law.

MR. JOYCE: Only if they were done without the permission of the registrar. * * *

[117] THE COURT: It appears that would be the date.

We have a little Washington weather for [118] you so I am going to have to keep you over until Friday morning because my inclination is, I will give you an indication and maybe you can get together to work out a procedure, I would ask you to have Mr. Ryan here on Friday morning and work out a procedure in which we would request from the government of Kenya the permission to bring the books of account and the membership lists that are required by the subpoena or in lieu thereof work out something with the government to get copies of those documents.

As to the other documents some method of making it easier for everybody concerned can be worked out between counsel.

We will take up those matters on Friday morning. Perhaps you gentlemen can get together in the meantime and work out some sort of procedure which would be satisfactory to both you and Mr. Ryan as to how that is to be handled.

[124] LOS ANGELES, CALIFORNIA
FRIDAY, JULY 12, 1968, 10:30 A.M.

[127] MR. MILLER: * * *

[130] There are as I have pointed out before in this case, I don't think—I know the cases establish the burden on the Government in a case such as this to demonstrate that they have attempted a compliance and to utilize the existing procedures. At this stage I remind the court of

the statements I made while at the bench and will go no further than that.

I would point out that there are in Kenya and in other civilized countries methods whereby foreign process can be recognized and can be utilized. I would respectfully suggest to the court in view of the fact that the witness is obviously a target of the Grand Jury [131] proceeding which is looking to indict him and, secondly, that there are witnesses who are directors and officers of this corporation including the president who is currently on his way to the club that it is these, shall I say, nontargets who should be required to produce the records and appear before the Grand Jury rather than one who has demonstrated that he does not have custody and control.

I would again point out to the court that the subpoena itself has substantial complications in terms of compliance. It is obviously partially a violation of Kenya law and may be more than that. It requires something that is of great physical effort, moving 2,000 pounds of original documents from Kenya to here. Other courts passing on this have said they would not require a witness to undertake such a magnitude in terms of not only the amount of documents but also in the hauling of documents halfway around the world. On all these bases, if the court please, it seems to me that the subpoena is unreasonable, oppressive and for the reasons earlier stated in my motion should be quashed.

* * * *

[145] THE COURT: You gentlemen can't seem to get together on anything. I might tell you what basically the feeling of the court is at the present time. I have started to write something down in terms of an order of what I was going to pose and that is.

"Court finds that petitioner Raymond J. Ryan at times before and after commencement of the investigation by the Treasury Department and Department of Justice has had control of the records, papers and couments [*sic*] pertaining to the operation of Ryan Investment, Ltd., Nairobi, Kenya, Mawingo, Ltd., Nanyuki and Nairobi [*sic*], Kenya doing busi-

ness as Mount Kenya Safari Club, Nanyuki and Nairobi, Kenya.

[146] "That pursuant to the agreement of counsel for Raymond J. Ryan and Raymond J. Ryan personally that agents of the Department of Justice and/or the Treasury Department may inspect and make copies of any books, records, papers and documents referred to in the subpoena served upon petitioner Raymond J. Ryan for appearance before the Grand Jury, Central District of California on 15 April 1968 at 10:00 o'clock a.m."

I was going to ask you to possibly elicit the agreement based upon an agreement which has been offered:

"That pursuant to agreement of counsel for Raymond J. Ryan and Raymond J. Ryan personally any copies of books, records, papers and documents made by agents of the Department of Justice and/or Treasury Department may be deemed used in lieu of any originals thereof in the same manner as originals subject only to objections to admissibility on grounds other than foundation or authentication."

MR. JOYCE: That would be satisfactory with the Government.

MR. MILLER: If I understand the court, what you are asking is that we waive the best evidence rule; is that it?

THE COURT: Yes. In other words, foundation [147] and authentication of documents of which they make copies.

MR. MILLER: It is a very difficult decision for me to make, never having seen these records. I just don't think in good conscience, representing Mr. Ryan, that I could in fact consent to that because I have not seen the documents. I do not know what is contained in the documents.

THE COURT: I guess we could order Mr. Ryan. The question of making copies or of viewing the books, records, papers and documents called for in the subpoena then require Mr. Ryan to use his best efforts of the

registrar or companies in Kenya to release those originals for us for use in the United States when they become necessary to be used.

MR. MILLER: We would have no objection to sending whatever was necessary requesting the registrar to do so.

THE COURT: In the meantime do you have any objection to them making copies of those books, records and papers?

MR. MILLER: We are willing, Mr. Ryan is willing to execute whatever may be necessary addressed to the registrar with respect—

THE COURT: I am talking about in reference to the companies, making available the books, records in Kenya for copy by the Government agents and then [148] should it be required further that you make application to the registrar of companies for the removal of the original documents, records and papers which are within the Kenyan law, that is, the books of account and the list of members which are the only ones. I take it the others can be removed without any question.

MR. MILLER: I can state to the court now that we are willing to make such application, without attempting to hedge or appear to, provided there is not some good basis for the objection.

THE COURT: I am not having you waive all objections but only objections as to foundation or authentication. They are records in the business of Ryan Investment Company. I assume they have been kept in the normal course of that business and would be admissible in that event just as to foundation. They might be objectionable on other grounds.

MR. MILLER: Yes, I see. That is what I was attempting to find out and clarify.

THE COURT: No, only the ground of foundation and authentication that these are books and records of the companies from which they appear to originate and they are kept in the normal course of business of these various companies.

MR. MILLER: We would certainly make such [149] application.

I can state I am quite sure Mr. Ryan cannot authenticate these books but if he can he will do so.

MR. JOYCE: We are not having Mr. Ryan authenticate them.

THE COURT: No.

How much time do you think you need for that, Mr. Joyce?

MR. JOYCE: To make the copies?

THE COURT: Yes, to do what you have to.

MR. JOYCE: Probably not over three weeks, your Honor. We had tentatively scheduled the Grand Jury to meet on the 24th of July.

THE COURT: Then to continue the appearance of Mr. Ryan to some time in September, and if you have got what you wanted there is no need to call him to authenticate records which is all he could do basically before the Grand Jury. His appearance would not be necessary if the attorneys for the Government and his attorney can stipulate that those records are such that foundation or authentication can be waived.

MR. MILLER: I missed that, if the court please.

THE COURT: We will continue now the appearance of Mr. Ryan to some time in September with the [150] understanding and the proviso in the order that his appearance would not be necessary if the stipulation were filed with the court between counsel indicating that his appearance was not necessary for the purpose of authentication or foundational questions as to records kept in the normal course of business of that company.

MR. JOYCE: Insofar as the procedure and the details we expect the copying would be done at the United States Embassy in Nairobi by agents of the U.S.

THE COURT: You cannot remove them from Kenya but you can move them around Kenya?

MR. JOYCE: They will be brought to Nairobi and copied there, wherever they are.

THE COURT: That procedure you can work out. It would be in keeping with the cases.

Do you gentlemen want to do this? Do you want to draw an order with respect to what the court has indicated and bring it down this afternoon for the court to

sign while Mr. Ryan is here so that I can personally order him back in September also?

MR. JOYCE: All right, your Honor.

We will go to the United States Attorney's office and prepare the document with Mr. Miller.

MR. MILLER: If the court please, I wonder if we could pick a date now and let Mr. Joyce and I work [151] out the order in Washington. We can order him because every time he has been ordered he has reappeared.

MR. JOYCE: It is my understanding that he will be ordered to produce the documents for inspection and copying by the United States.

THE COURT: Yes.

MR. MILLER: We can have him back were such an order drafted. I am not sure we can put it out this afternoon in a satisfactory way.

THE COURT: We can order him back next week. If the order is drawn, Mr. Joyce, you do not have to be here because I can order him back without the presence of Government counsel.

MR. MILLER: If the court please, could we do this? Could we leave it at this posture: Mr. Joyce and I will attempt to work out a proposed order. If we cannot come together we will each submit one and that once that has been accomplished if you will notify me we will have Mr. Ryan present in the courtroom and you can direct him with respect to the order.

THE COURT: This should give us enough time. I will order him back on July 22nd, 1968 at 2:00 p.m.

MR. JOYCE: Well, the Grand Jury will meet on the 24th in any event.

MR. MILLER: May I request that it be the [152] 24th then because Miss Hansen has been called.

THE COURT: The 24th at 10:00 a.m.

Mr. Ryan, you are to return to this court on July 24th, 1968 at 10:00 a.m. for further consideration of the matter of your appearance before the Grand Jury. Do you understand that?

THE WITNESS RYAN: Yes, sir.

THE COURT: With the proviso set forth by the court in its oral order and the order that will be sub-

mitted in writing by counsel the motion at this juncture is denied without prejudice to the petitioner Raymond John Ryan. I take it you will bear the responsibility, Mr. Joyce, of preparing the order. I will give you my written notes.

MR. JOYCE: Yes, your Honor, if there is an agreed order sent out to the United States Attorney's office.

THE COURT: Restrict it to the companies as I have because the findings can go only to those companies. I don't have any evidence about Zimmerman and 7-Up Bottling Company.

MR. MILLER: If the court please, it would be tremendously helpful if we could have a copy of the transcript. I know it is probably an unreasonable request but we would like to ask if at all possible that [153] we could have a transcript.

THE COURT: The reporter can get out those portions this afternoon. The reporter will just have transcribed those parts with reference to the order.

I still have the matter of Mr. Gorman's appearance.

MR. JOYCE: May I be excused? Mr. Michael will handle the Gorman matter while I go up to get Xerox copies of the court's notes.

THE COURT: Yes.

* * *

[194] LOS ANGELES, CALIFORNIA,
THURSDAY, JULY 25, 1968, 10:00 A.M.

* * *

[223] THE COURT: You prepared an order with reference to these records.

MR. MICHAEL: That is right, your Honor.

THE COURT: I don't think this is what I discussed with you gentlemen, I don't think this is what I had discussed at that time.

It was my understanding it was the order of the court that Mr. Ryan would make the records available. He would make all the records available in [224] Kenya for copying by agents of the Grand Jury so that those matters could be brought to the United States and presented to the Grand Jury.

The question was whether or not you gentlemen could get together on a stipulation of authenticity.

MR. MICHAEL: Your Honor, it is perfectly agreeable to the Government, and that is what our order was attempting to reflect. The only differences between what I feel the Government proposed in this order and what the court's order suggested was upon agreement of counsel. Mr. Miller and I discussed it. He prepared a contrary order which he submitted to me. I understand he has not submitted that to the court. He understood there was a proposed order which we were submitting of which he was given a copy a week ago today. The Government is perfectly agreeable to have Mr. Ryan being ordered to make available the records in Kenya for copying by agents of the United States Government. The only exception was the court did make reference to certain documents which need not be maintained within Kenya. It was included in the Government's order.

THE COURT: In the event that you cannot reach a stipulation as to authenticity then the court would order that these documents would be brought and that [225] he make application as to the others.

MR. MICHAEL: I have no idea what Mr. Miller's position on authenticity is. Certainly so far as the Government is concerned the copying in Kenya is perfectly adequate. The originals need not be produced within the United States.

As the court point out solely on the grounds of authenticity and the foundation—

MR. MILLER: If the court please. I did in fact prepare a proposed order which I submitted to Mr. Michael which was substantially different from the order which the Government submitted. Frankly, after discussing it back and forth we have decided we were so far apart that further discussion would in fact be fruitless.

If it please the court, I, of course, feel for the reasons we have already stated, I am not going to go into them now because the court has fully heard me on this, that the order itself is in effect beyond the jurisdiction of the Grand Jury. I have made all these points before and I will not take the court's time and go into them again. I

just feel that the order prepared by the Government is one which just cannot be sustained and consequently I respectfully object to its entry. I feel I can do no more.

[226] MR. MICHAEL: I don't understand what Mr. Miller's position is on the authenticity either.

MR. MILLER: I made the statement the last time and I will repeat it to the court. So far as I am concerned I do not believe that it is possible for my client to authenticate those records. I just don't think he has the knowledge or the capability of authenticating the records. Therefore they could not possibly stipulate that he will do so because he would in effect be committing perjury in authenticating the records.

* * * *

[228] THE COURT: We will make it September 11, that is two weeks before the appearance proposed of Mr. Hirschman.

Mr. Gorman, Mr. Ryan, you are to appear before the Grand Jury on September 11, 1968 at 9:30 a.m.; do you understand that?

MR. RYAN: Yes, sir.

THE COURT: Mr. Gorman, do you understand that?

MR. GORMAN: Yes.

THE COURT: Will you reprepare the order that I have made some corrections in.

MR. MICHAEL: Does the order indicate exactly where in Kenya? We suggested earlier the American Embassy. We discussed that with Mr. Miller. That would be in Nairobi and there is a copying machine there.

THE COURT: They are not agreeing to that procedure. He has been ordered to bring the records here in the order.

MR. MICHAEL: I see.

THE COURT: The order will be also, Mr. Ryan, that you produce with the exception of the books of account, the minute books and list of members before the Grand Jury on September 11, the books, records, papers [229] and documents of Ryan Investment, Ltd. of Nairobi, Kenya and Mawingo, Ltd. of Nanyuki and Nairobi, Kenya, doing business as the Mount Kenya Safari Club. You shall also forthwith make application to the registrar

of companies in Kenya to release the books of account, minute books and list of members so that you may produce these books, records, papers and documents at the Federal Grand Jury on September 11, 1968. Failing your ability to get the consent of the registrar of companies in Kenya to release such books for presentation you will make available to agents of the United States Department of Justice and/or the United States Department of Treasury the books of account, minute books and list of members of Ryan Investment, Ltd. and Mawingo, Ltd. as set forth above so these agents may inspect and make such copies of these books in Kenya.

MR. RYAN: Yes, sir.

THE COURT: Will you prepare the order?

MR. MICHAEL: Yes, sir.

* * * *

[Transcript, Vol. 1]

[75]

[Filed July 25, 1968]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Misc. No. 1926

COURT'S ORDER

**IN THE MATTER OF THE GRAND JURY SUBPOENA DUCES
TECUM OF THE WITNESS, RAYMOND J. RYAN**

The witness Raymond J. Ryan was served with a grand jury subpoena on March 5, 1968, requiring his appearance before the grand jury on April 15, 1968, and the production of various corporate documents.

Pursuant to motion to quash the subpoena duces tecum filed by the said witness his grand jury appearance was ordered continued to a future date.

Hearings on the motion to quash were held, and the Court finds that the petitioner Raymond J. Ryan at times before and after commencement of the investigation by the Treasury Department and Department of Justice has had control of the records, papers, and documents referred to by the subpoena duces tecum which pertain to the operation of Ryan Investment, Ltd., of Nairobi, Kenya, and Mawingo, Ltd., of Nanyuki and Nairobi, Kenya, doing business as The Mount Kenya Safari Club of Kenya.

[76]

WHEREFORE, IT IS ORDERED THAT:

I. The motion of Raymond J. Ryan to quash the subpoena duces tecum is denied.

II. Raymond J. Ryan will produce, with the exception of the books of account, minute books and the list of mem-

bers, before the Federal grand jury at Los Angeles, California, on September 11, 1968, the books, records, papers and documents of Ryan Investment, Ltd., of Nairobi, Kenya, and Mawingo, Ltd., of Nanyuki and Nairobi, Kenya, doing business as The Mount Kenya Safari Club, referred to in the April 15, 1968, subpoena duces tecum served on Raymond J. Ryan.

III. Raymond J. Ryan shall forthwith make application to the Registrar of Companies in Kenya to release the books of account, minute books, and list of members so that Raymond J. Ryan may produce these books, records, papers and documents at the Federal grand jury held at Los Angeles, California, on September 11, 1968, provided that if Raymond J. Ryan is unable to secure the consent of the Registrar of Companies of Kenya, then Raymond J. Ryan will make available to agents of the United States Department of Justice and/or the United States Department of the Treasury the books of account, minute books, and list of members, of Ryan Investment, Ltd., and Mawingo, Ltd., and these agents may inspect and make copies of these books and records.

/s/ Manuel L. Real
MANUEL L. REAL
United States District Judge

[77]

[Filed Aug. 5, 1968]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA****Misc. No. 1926****NOTICE OF APPEAL****IN THE MATTER OF THE GRAND JURY SUBPOENA DUCES
TECUM OF THE WITNESS, RAYMOND J. RYAN**

Notice is hereby given that RAYMOND J. RYAN, witness before the grand jury in and for the Central District of California, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain order filed 25 July 1968 and signed by the Hon. Manuel L. Real, United States District Judge, a true copy of which is annexed hereto and incorporated herein by this reference, and from every portion thereof.

Dated: 5 August 1968.

MILLER, MCCARTHY, CASSIDY & LARROCA

By: **Herbert J. Miller**
HERBERT J. MILLER

• • • •

[Transcript, Vol. 4]

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Honorable Manuel L. Real, Judge Presiding

Misc. 1926

IN THE MATTER OF RAYMOND JOHN RYAN,

No. 2961—Criminal

UNITED STATES OF AMERICA, PLAINTIFF,

v.

RAYMOND JOHN RYAN, DEFENDANT.

* * * *

[3] LOS ANGELES, CALIFORNIA,
TUESDAY, DECEMBER 2, 1969, 10:00 A.M.

* * * *

THE COURT: Since we haven't done it previously I wonder if you gentlemen might enlighten the court to what was filed in the Court of Appeals.

MR. MILLER: I would be happy to.

If the court please, on October 8, 1969, I prepared a letter and sent to the United States Court of Appeals for the Ninth Circuit, Appeal No. 23343, styled In the Matter of the Grand Jury Subpoena of Raymond J. Ryan, Appellant, a pleading entitled Motion for Order in Aid of Court's Appellate Jurisdiction. This pleading, copies of which I have here, was served upon William Matthew Byrne, Philip R. Michael, Gerald D. McDowell of the Criminal Division.

Following the filing of the motion the Government filed a response which was received in our office [4] on October 14, 1969. In the response the Government op-

posed appellant's motion to stay the District Court proceeding. It was signed by Edward T. Joyce and Philip R. Michael's name was on the pleading.

Subsequent thereto on October 20 the Court of Appeals entered an order in which, among other things, they directed that the order of the court was scheduled on December 2, 1969, date for commencement of the trial of the said District Court cause in No. 2961—Criminal, it should be stayed and the same hereby is vacated. The trial of the said District Court cause will be continued pending this court's disposition of the subject appeal or until further order of this court. I have, for the record, I will submit to the clerk, a certified copy of that order. As I said, the order was entered October 20, 1969. There was no appeal pending in the Court of Appeals as I knew and as the Government knew from District Court cause No. 2961—Criminal. However, in view of the fact that the Government filed no motion to clarify and took no step to clarify the order, I assumed as in fact did the Government that since the two cases had been consolidated that the trial date had in fact been vacated and put over.

In the motion that we filed with the court our entire pleading was directed to the appeal in the [5] criminal contempt case and had no relation whatsoever to the charge involved in criminal case No. 2961—Criminal. I feel then, now and before as of October 20 had the Government desired to make some motion to sever this case to clarify the order of the United States Court of Appeals for the Ninth Circuit they could have done so.

* * * *

[9] THE COURT: It would seem to me as officers of the court both counsel for defendant and the Government had the duty to notify the court that they had made an error, that their order was without jurisdiction.

MR. MILLER: If the court please, I would respectfully disagree with the court on that for this basic reason. The two cases were consolidated for trial. I assumed if one were stayed—

THE COURT: That does not consolidate the cases for the nature of the appeal that is before the appellate

court and does not give the appellate court jurisdiction in case No. 2961. If that case goes up at all it has to go up on a writ of prohibition, that is the only jurisdictional way that case can get before the Court of Appeals.

MR. MILLER: I agree with the court.

THE COURT: The order of consolidation does not give the Court of Appeals jurisdiction over case 2961.

MR. MILLER: And we made no representations in the Court of Appeals that any of our motions were [10] directed to civil cause No. —

THE COURT: I am telling you as an officer of the court it was the duty of counsel to notify the court that they had made an error when that error is so obvious.

MR. MILLER: If the court please, in view of the fact that the two cases had been consolidated for trial and it had been the position of the United States Government, or at least counsel for the United States Government, that the cases should go to trial together that regardless of what the Court of Appeals order said I assumed if one were stayed the Government would not desire to proceed with the other.

THE COURT: What I am telling you, Mr. Miller, is that the Government does not set the calendar of this court.

MR. MILLER: I agree with that.

THE COURT: Their only alternative, if they didn't want to proceed, is to dismiss the matter because this court sets its calendar.

MR. MILLER: If the court please, if the Government desired to proceed then I assumed that they would have filed an order of clarification with the Court of Appeals and with that accomplished the whole matter would have been right back where it was. The only stay [11] was in the contempt case. If the two cases were not consolidated then it would be a different matter but they were in fact consolidated.

THE COURT: But that does not give the Court of Appeals jurisdiction and you know that.

MR. MILLER: I am not arguing that it does. I admit the Court of Appeals did not have jurisdiction of any

appeal in 1961—Criminal because I did not file any notice of appeal nor pleadings.

THE COURT: Then why didn't you advise the Court of Appeals they had made an error that their order was without jurisdiction.

MR. MILLER: Because I did not believe it was material since the Government felt that they wanted to try the two cases together. So far as I was concerned the error was immaterial. The prime point, the main point was that one of the two cases had been stayed and once that was the case and assuming, as I did on the basis of the prior statements of Government counsel, they wanted these two cases tried together. I assumed the fact that they put the wrong number in the order was totally immaterial. I think that is the fact, if the court please.

THE COURT: Now, Mr. Joyce, I want to hear from you why you did not notify the Court of Appeals.

[12] **MR. JOYCE:** First of all, your Honor, we never received a copy of the order. We never received a copy of the order of the Court of Appeals and were operating by—

THE COURT: Mr. Joyce, don't tell me that because a copy of the order was given to me by the United States Attorney with a stamp on it, "Received October 22nd."

MR. JOYCE: I am saying that we did not, your Honor, we did not in the department—

THE COURT: Who is "we"?

MR. JOYCE: In the Department of Justice.

THE COURT: Is the Department of Justice a different government than the United States Attorney?

MR. JOYCE: No, your Honor, it is not a different government.

THE COURT: You are the same party and when you appear in this district you appear through the offices of the United States Attorney in this district. You just better find out what is going on when you have cases which are involved here.

MR. JOYCE: We were informed that the trial date had been set aside and assumed that the trial date for both cases had been set aside. We did not analyze this

situation to come to the conclusion that there had [13] been an error in the Court of Appeals and just went on the assumption that there was no trial date for either of the consolidated counts. We had planned as soon as the trial calendars of Mr. Michael and myself were cleared to move for a severance because there is no way of knowing when that contempt appeal will be finished.

As I said, we had plans to move for severance and go to trial on the instruction but Mr. Michael is currently engaged and I have a trial starting on Monday which will take the rest of the month. We wanted to make sure our motions were compatible with our availability for trial.

THE COURT: I think both of you owe the court the courtesy of at least advising the court what is going on in this lawsuit.

MR. JOYCE: Your Honor, I apologize.

THE COURT: Both of you failed in that courtesy.

MR. JOYCE: For any lack of courtesy on our part on behalf of the United States I apologize to the court. There was no intentional discourtesy. I do apologize for the lack of foresight in realizing that this situation had come about.

THE COURT: The court takes judicial notice that there is no case No. 2961 pending before the Court of [14] Appeals. The only case before the Court of Appeals is case No. 1926-Miscellaneous on appeal argued May 14, 1969, not yet decided. Case No. 2961 is now set for trial on January 6, 1970, at 9:30 a.m. The case will go to trial then.

MR. JOYCE: Thank you.

THE COURT: If case 1926 has been decided by that time it will also go to trial.

We deem that the stay order is in case 1926 and not in case 2961.

* * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23,348

IN THE MATTER OF THE GRAND JURY SUBPOENA DUCES
TECUM OF RAYMOND J. RYAN, *Appellant*.

[May 19, 1970]

Appeal from an Order of the United States District Court
for the Central District of California

Before: JERTBERG, MERRILL, and ELY, Circuit
Judges.

PER CURIAM:

This appeal is from an Order of the District Court denying appellant's motion to quash a subpoena duces tecum, ordering him to produce most of the documents called for by the subpoena and requiring affirmative action in relation to other documents. Ryan presents several important contentions in this court, including persuasive arguments grounded in constitutional law. We have concluded that we need not resolve all of these issues, having finally become convinced that the Order is vague and overly broad.

Ryan, an American citizen, has been under investigation for tax evasion for several years. The aspect of the investigation with which we are dealing concerns several African businesses of which Ryan is apparently the principal shareholder. He was subpoenaed by the Grand Jury of the Central District of California and ordered to bring with him "all books, records, papers, and documents" pertaining to five different companies, all located in Kenya. Ryan moved to quash the subpoena on the grounds, among others, that it was overly broad, that it was served improperly, and that full compliance with it would require

him to violate Kenya law. The District Court denied the motion to quash and entered the Order from which Ryan appeals.

The Government contends that we have no jurisdiction to entertain the appeal, arguing that the Order is nothing more than an interlocutory order in a criminal proceeding. Several cases are cited in support of this contention. *Cobbledick v. United States*, 309 U.S. 323, 84 L. Ed. 783, 60 Sup. Ct. 540 (1940); *In re Grand Jury Investigation*, 318 F.2d 533 (2d Cir. 1963); *In re Buckley*, 395 F.2d 385 (6th Cir. 1968). In none of the cases cited, however, had the District Court ordered anything other than compliance with the subpoena. In contrast, the District Court here modified the subpoena with respect to certain documents and directed the appellant to undertake steps in a foreign country to have those documents released by other persons for transportation to this country or for inspection in Kenya by United States agents. In directing that affirmative action be taken in another country, the District Court did more than deny a motion to quash; it in effect granted a mandatory injunction which, given full effect, would require action by officials of the Kenyan Government. See *International Longshoremen's Assn. v. Philadelphia Marine Trade Assn.*, 389 U.S. 64, 19 L. Ed. 2d 236, 88 Sup. Ct. 201 (1968). We therefore conclude, in the particular circumstances of this case, that we should hold the Order to be appealable under 28 U.S.C. § 1292 (a) (1). See *Continental Oil Co. v. United States*, 330 F.2d 347 (9th Cir. 1964). Cf. *Lampman v. United States Dist. Ct.*, 418 F.2d 215 (9th Cir. 1969).¹

As an injunction, the Order is defective in not stating with sufficient particularity what Ryan was expected to do. Moreover, it is oppressive in scope, it being said without contradiction that Ryan's compliance would require him to transport 2000 pounds of records at his own expense from Kenya. The challenged Order incorporated

¹ In *Lampman*, the sole challenge to the subpoena was based on action allegedly conflicting with Internal Revenue Service administrative procedures. While we held the Order in *Lampman* was not appealable, that Order cannot be fairly compared, in breadth, reach, or overseas effect, to the one that is now before us.

by reference the subpoena, which had called for all records of the five businesses "including but not limited to check-books, books of accounting, disbursement journals, and any and all correspondence relating to these five entities, as well as records, books, papers, documents, and correspondence relating to the application of the currency control regulations and the foreign investments protection act of Kenya to these five" companies. The Government conceded that the subpoena itself was overly broad, but the District Court did not undertake to clarify it or to limit it, except to remove only a few documents from its attempted operation. As to those excepted documents, the Order required affirmative action on the part of Ryan that, arguably, would require him to violate the law of Kenya. Finally, we note that the need for the subpoena, or an injunction, could have been obviated by the use of letters rogatory. The District Court refused to require this approach because of information presented to the court *in camera* and not disclosed to Ryan or his counsel. This information purportedly related to Ryan's improper influence upon the Attorney General of Kenya. On the record before us, we cannot accept the insinuation that the authorities of a friendly foreign power are subject to corruption. We were informed on oral argument that letters rogatory are now being pursued by the Government, and we have no reason to doubt that the Kenyan Government and its officials will respond in a manner consistent with their jurisprudential heritage.

Reversed.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23843

IN THE MATTER OF THE GRAND JURY SUBPOENA DUCES
TECUM OF RAYMOND J. RYAN, APPELLANT

APPEAL from the United States District Court for the
Central District of California.

THIS CAUSE came on to be heard on the Transcript
of the Record from the United States District Court for
the Central District of California and was duly sub-
mitted.

ON CONSIDERATION WHEREOF, It is now ordered
and adjudged by this Court, that the judgment of the
said District Court in this Cause be, and hereby is re-
versed.

Filed and entered May 19, 1970.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Excerpt from Proceedings of Wednesday, July 29, 1970
Before: JERTBERG, MERRILL and ELY, Circuit Judges**

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court,
IT IS ORDERED That the petition of the United States
of America filed June 29, 1970 and within time allowed
therefor, and valid extension thereof, by rule of Court,
for a rehearing of above cause be, and hereby is denied,
and the suggestion for a rehearing en banc is rejected.

Monday, January 18, 1971

SUPREME COURT OF THE UNITED STATES

CERTIORARI GRANTED

**No. 758. United States, petitioner, v. Raymond J. Ryan.
Petition for writ of certiorari to the United States Court
of Appeals for the Ninth Circuit granted.**